

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0404 ITC

Income Tax

Calendar Years: 1989, 1990, 1991, 1992, 1993, 1994, And 1995

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ISSUES

I. **Adjusted Gross Income Tax.** – Imposition

Authority: 6-8.1-5-1(a)

The taxpayer protests the "Best Information Available" assessment.

II. **Penalty.** – Fraudulent intent to evade tax.

Authority: 6-8.1-10-4

The taxpayer protests the imposition of the 100% fraud penalty.

STATEMENT OF FACTS

This Letter of Finding is in regard to the protest of the income audit performed by the Department for the years 1989 through 1995.

The taxpayer is a used car dealer located on the west side of Indianapolis. The taxpayer was incorporated in 1989. The taxpayer files as a SC corporation.

I. **Adjusted Gross Income Tax.** – Imposition

DISCUSSION

The taxpayer protests the “Best Information Available” assessment. The Department requested records from the taxpayer. The taxpayer did not provide records. The taxpayer stated the records were not available as the records were destroyed in a fire and two burglaries. As no records were available, the Department calculated the adjusted gross income using best information available.

The adjusted gross income has been calculated from the gross revenue computation, the gross profit percentage, and the expense deduction.

The gross revenue consists of car sales and comic book sales. The gross revenue does not include other income as other income represents capital gain from real estate sales. The Department has determined that mortgage paydown and real estate sales attribute to the individual owner of the taxpayer. The comic book sales are nominal. Basically, the gross revenue is the car sale income that is derived from the Bureau of Motor Vehicle Title Transaction report.

The Bureau of Motor Vehicle Title Transaction report is a recap of all the ST-108 sales tax certificates generated by the taxpayer. A sales tax certificate is generated whenever a car is sold. The certificate denotes the revenue and the sales tax collected on the car sale.

The gross profit figure is calculated using Industry Standards and Key Business Norms, August 1997.

The net income figure was computed by subtracting expenses from gross profit. The Department used the taxpayer’s returns to compile expenses. The Department did not use the Industry Standards and Key Business Norms book as the Industry Standards expense figure includes salaries and wages. As the taxpayer had no employees, including salaries and wages in an expense calculation would understate the net income figure. Thus, the Department used the expenses as denoted on the taxpayer’s returns.

The taxpayer protests the adjusted gross income calculation. First, the taxpayer objects to the gross revenue calculation as the Bureau of Motor Vehicle Title Transaction report has BMV reporting errors, and, the BMV report does not consider the revenue reduction resulting from the cessation of car payments. Secondly, the taxpayer objects to the expense calculation for the years 1989, 1990, & 1991 stating the expenses should be averaged along with the gross revenue.

With regard to reporting errors, the taxpayer has given no evidence that reporting errors in the Bureau of Motor Vehicle Title Transaction report occurred. This, the taxpayer states, is because the records were destroyed in a fire and two burglaries. There is no casualty report that supports the occurrence of a fire. There are two police reports that support the occurrence of the burglaries; however, there is no documentation that records

were destroyed. To conclude, the Department feels the taxpayer has not presented evidence of any reporting errors in the Bureau of Motor Vehicle Title Transaction report.

With regard to the cessation of car payments, the taxpayer states the Bureau of Motor Vehicle report does not consider the revenue reduction resulting from the cessation of car payments when a car is stolen, damaged, or repossessed. The Department agrees. However, the Department does not recognize the interest income resulting from the financing of taxpayer's car sales. As the overstatement of revenue is compensated by not recognizing interest income, the Department feels the net income calculated in the audit report is representative of the "true" income.

With regard to averaging expenses for 1989, 1990, and 1991, the Department did not average expenses as the calculated gross revenue was higher than the gross revenue reported by the taxpayer. As there was no distortion in the gross revenue, the Department did not adjust the expenses reported by the taxpayer.

The Department relies on the "Best Information Available" assessment as the assessment fairly represents the income of the taxpayer. There is a material discrepancy between the adjusted gross income calculated by the Department and the adjusted gross income computed on the taxpayer's federal returns. As the taxpayer's federal returns were not realistic, the taxpayer's federal returns were ignored.

Indiana Code 6-8.1-5-1(a) states, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made before the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail."

To conclude, the Department's calculation of adjusted gross income is based on best information available. The calculation is proper as good audit sources were used and the taxpayer had no reliable records.

FINDING

The taxpayer's protest is denied. The Department finds the Bureau of Motor Vehicle Title Transaction report to be a good source from which to calculate adjusted gross income tax.

II. **Penalty.** – Fraudulent intent to evade tax.

DISCUSSION

The taxpayer protests the imposition of the 100% fraud penalty. The Department assessed the penalty based on the fact the "Best Information Available" net income

calculation was materially different from the income reported by the taxpayer on the income tax returns.

The taxpayer argues that as a result of a fire and two burglaries, the taxpayer did not have the proper records that could compute income.

The Department finds that there are no insurance papers that substantiate the fire loss. There are police reports that substantiate the burglaries, but there is no documentation that records were destroyed.

Indiana Code 6-8.1-10-4(a) & (b) state, "If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent to evade the tax, the person is subject to a penalty. . . . The amount of the penalty imposed for a fraudulent failure . . . is one hundred percent (100%) . . ."

The Department agrees that the lack of records would result in inaccurate reporting. The Department holds that there is insufficient evidence substantiating the claim that the taxpayer fraudulently evaded his tax obligation.

FINDING

The taxpayer's protest is sustained. The Department has not proven the taxpayer fraudulently intended to evade tax. However, the 10% negligence penalty is imposed.